

**PUBLIC COMMENTS**  
**PUBLIC LANDS FOUNDATION**  
**AGENCY: COUNCIL ON ENVIRONMENTAL QUALITY**  
**DOCKET NUMBER: CEQ-2025-0002**  
**INTERIM FINAL RULE**

**The Public Lands Foundation (PLF)** is a national nonprofit membership organization that advocates and works for the retention of America’s Public Lands in Public Hands, professionally and sustainably managed for responsible use and enjoyment by American citizens. The PLF endorses and embraces the multiple use mission of the U.S. Department of the Interior (DOI), Bureau of Land Management (BLM). Members are predominately retired BLM public servants from across the United States.

We are pleased to offer comments and observations on the Council on Environmental Quality’s Interim Final Rule, “Removal of National Environmental Policy Act Implementing Regulations,” published in the Federal Register on February 25, 2025. Comments on the Rule were requested to be provided by March 27, 2025.

**The Legal and Administrative Status Surrounding the Rule Making**

The legal and administrative situation regarding the proposed removal of the National Environmental Policy Act (NEPA) regulations issued by the Council on Environmental Quality (CEQ) is complex. So that an understanding of PLF’s comments is clear, we present a brief summary of the history leading up to this proposal.

The NEPA was enacted by Congress in 1969 and signed into law by President Nixon on January 1, 1970. Shortly thereafter he issued Executive Order (EO) 11514, “Protection and Enhancement of Environmental Quality.” This EO directed the CEQ to issue guidelines to federal agencies who were then in the process of developing their individual regulations and practices to comply with the NEPA. Those guidelines were issued in April 1970. Revisions to the guidelines were issued in 1971 and 1973. Between 1970 and 1977 approximately 70 different sets of agency regulations were developed. This led to a vast variety of ways to implement the NEPA, adding time to processing NEPA analysis due to non-consistent agency methods for implementing the law, involving the public, and ways of informing the federal decision maker.

In response to inconsistency and confusion among the various sets of regulations (especially when multiple federal agencies had decision-making authority over individual projects), President Carter, in 1977 issued EO 11991. This EO directed the CEQ to issue NEPA regulations and among other things, required federal agencies to ensure that their individual agency regulations were consistent with the CEQ regulations. These CEQ regulations were promulgated on November 29, 1978. Based on lessons learned and coordination to reduce inconsistencies in implementation across federal agencies, the CEQ amended the NEPA implementing regulations and made

corrections in 1979, 1984, 1986, 2020 and 2024. It is the evolved version of these regulations that the CEQ has now proposed to remove from the code of Federal Regulations (40 CFR Parts 1500 – 1508).

On January 20, 2021, President Biden issued EO 13990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis." This EO revoked EO 13807, "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects," issued by President Trump on August 15, 2017, which sought to revise and improve the efficiency of the NEPA process for infrastructure permitting. In response to EO13990, the CEQ finalized regulations on April 20, 2022. These regulations are sometimes referred to as "Phase 1" Rules.

On June 3, 2023, President Biden signed into law the Fiscal Responsibility Act of 2023 (FRA), which included amendments to the NEPA. The CEQ proposed rules implementing those NEPA amendments and finalized them on May 1, 2024. These regulations are sometimes referred to as "Phase 2" Rules. Shortly thereafter, twenty States challenged CEQ's Phase 2 rules.

On January 20, 2025, President Trump issued EO 14154, "Unleashing American Energy." Among other things, this EO:

- 1) Revoked EO 11991,
- 2) Directed the CEQ to propose rescinding its existing NEPA regulations,
- 3) Required the CEQ to provide guidance to agencies on implementing NEPA, and
- 4) Required the CEQ to convene a working group to coordinate revisions of agency-level NEPA regulations to be consistent with policy in the EO.

On January 31, 2025, in *Marin Audubon Society v. Federal Aviation Administration*, the U.S. Court of Appeals for the District of Columbia found the CEQ lacked authority to promulgate its Biden-era NEPA regulations. Although the CEQ's rulemaking authority was not directly at issue in the case, the Court questioned whether President Carter's 1977 EO unlawfully converted the CEQ from an advisory body to a regulatory agency. The Court viewed the CEQ's authority to promulgate binding regulations as a separation of powers issue that it was required to weigh in on. The Court found that the CEQ improperly attempted to derive its NEPA rulemaking authority from an executive order rather than the law itself. According to the Court, an executive order "Is not 'law' within the meaning of the Constitution." Then on February 3, 2025, a North Dakota Federal District Court (this is where the 20-state challenge to the Phase 2 Rules was filed) vacated the CEQ's Biden-era NEPA regulations, finding that the CEQ lacked statutory authority to promulgate NEPA regulations in the first place.

Thus, as of the date of these comments:

- CEQ NEPA regulations have no force of law.
- CEQ has advised agencies to continue using their existing agency-specific NEPA regulations or guidance. These regulations and guidance generally reflect the "Phase 1" Rules, implemented on April 20, 2022, under EO 13990.

- Agencies have until February 16, 2026 to revise their existing NEPA regulations and guidance to conform to EO 14154.

### **The Public Land Foundation's Observations and Comments**

No doubt the current legal status of the CEQ NEPA Regulations will change, as the inevitable lawsuits and appeals move the question of their legitimacy through the legal system. Therefore, we choose to focus our comments on the circumstances of an impending period of uncertainty in which the question of which NEPA regulations guide agency actions is paramount; and a future period with questions about the nature of revised NEPA regulations or guidance.

The National Environmental Policy Act, like the national system of public lands, is a uniquely American idea that demonstrates to the world our resolve to encourage productive and enjoyable harmony between man and his environment, to promote efforts to prevent or eliminate damage to the environment, and to stimulate the health and welfare of man. The NEPA directs federal agencies to use all practicable means and measures to promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and to fulfill the social, economic, and other requirements of present and future generations of Americans. Central to this purpose is informed decision-making assisted by environmental analysis and robust public involvement. In the near future, no matter which regulations are in place, we encourage the Council to not lose sight of these objectives and processes.

The most pressing challenge in the current regulatory environment is to maintain consistency among the myriad of federal agencies with regard to their NEPA implementing practices. President Carter's attempt, while an improvement on the first several years, for the moment, appears to be voided by these interim regulations. We recommend that the CEQ exert the clearest, simplest, but strongest guidance possible to agencies when providing oversight and advice on NEPA implementing procedures. Summarizing and communicating the results and effects of court decisions seems like a good starting place. Failure to find a consistent way forward will only place the whole situation back to where it was in 1977. The PLF requests that the CEQ issue advisory guidance that the existing agency NEPA implementing regulations are not affected by the revocation of the CEQ specific regulations. Each agency's current regulations are now more consistent across all federal agencies, based on the work of interagency federal agency NEPA experts efforts to improve and streamline the procedures over the past decades than they were in 1977.

The NEPA implementing regulations, or the future NEPA guidelines, can be used to streamline how the various federal agencies implement the law. One example of how the CEQ has provided leadership and guidance across federal agencies is the March 16, 1981 CEQ "Memorandum to Agencies Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations and the Healthy Forest Initiative." The Forty Questions Memorandum was created with agency expert and public input to clarify guidance to the questions most commonly asked regarding NEPA implementation. The other example is the CEQ led effort under President George W. Bush to streamline how environmental assessments were completed to improve forest health projects. Based on CEQ leadership and guidance, the federal agencies tested methods and

improved how best to streamline the completion of Forest Health Environmental Assessments, added Categorical Exclusions, and revised their decision appeals processes. These actions were codified in the Healthy Forest and Restoration Act. This may be a model for the future for the CEQ to lead agencies in testing new or streamlined environmental assessments to implement the NEPA and then codify those results in subsequent laws.

We request that the CEQ issue an immediate “Advisory to the Agencies”, to continue implementation of agency specific NEPA regulations which were promulgated under agency authority and regulatory requirements. We believe the Department of the Interior and its subordinate agencies (including the Bureau of Land Management) will continue to implement their existing NEPA regulations and guidance. The BLM has a strong reputation regarding the application of NEPA processes to its actions and decision-making. The BLM is often one of the top five federal agencies in the completion of NEPA documents (Findings of No Significant Impact, Determination of NEPA Adequacy, Environmental Assessments, and Environmental Impact Statements). These multiple use and sustained yield actions include:

- Land Use plans
- Grazing leases and permits
- Special Recreation permits
- Land sales and exchanges
- Forest health and restoration actions
- Right-of-Way grants
- Oil and Gas leases
- Permits to Drill
- Mining applications
- Coal leases

Until recently, the BLM followed the CEQ regulations (40 CFR 1500 –1508) and guidance in the Department of the Interior Manual (516 DM). Previously, the BLM had issued a number of NEPA guidance documents including its NEPA Handbook (H-1790-1), first issued in 1988, revised and reissued in 2008. In 2012, the BLM Washington Office issued the “Planning and Environmental Analyst Desk Guide.” All of this guidance was supported by a strong educational program of online and in-person training, consisting of over 40 courses, offered at the agency’s National Training Center in Phoenix, Arizona. That Curriculum is available today and is documented in the “Curriculums Guide to the National Environmental Policy Act,” issued in 2019.

In summary, over the years the CEQ oversaw several efforts to streamline NEPA implementation. The NEPA itself is an umbrella Act whose regulations include simple requirements to inform the public of proposed federal actions and for the public to have input into federal decision making. Several efforts since its enactment in 1969 have built on lessons learned to streamline its implementation at the federal level. The 1977 Regulations require disclosure to inform the public of proposed federal actions consistently across federal agencies, so both federal decision makers and the public understand the minimum requirements regarding how to provide public input into federal decisions and a minimum requirement for federal decision makers to make informed

decisions to meet the purpose of NEPA. If the CEQ NEPA Implementing Regulations are revoked, then the CEQ should issue clear guidance for the federal agencies to continue to implement the NEPA, based on their agency specific regulations.

The purpose of NEPA is to ensure federal agencies consider environmental impacts in their decision making and actions, promoting environmental stewardship and public involvement in the decision-making process. The NEPA Regulations over the years have strived to clarify and simplify requirements across federal agencies. Requirements for Environmental Impact Statements, Environmental Assessments, and Categorical Exclusions have been clarified over the years through the CEQ regulations and the CEQ Forty Questions Memorandum. The CEQ regulations should at a minimum be issued as strongly recommended guidance to all federal agencies.

The CEQ has provided direction and guidance across federal agencies regarding NEPA implementation so that federal agencies can focus on the clarity of federal actions purpose and need; analyzing direct and indirect impacts related to the purpose and need; acquiring public involvement; and informing the federal decision maker. For example, CEQ provided several ways to streamline NEPA implementation to address forest health projects. Under President George W Bush, the CEQ worked with federal land management agencies to reiterate that EISs should be 150 pages, EAs should be 15-20 pages and added CXs. This was based on lessons learned across agencies and to refocus the need to provide concise, well written and focused documents. Other efforts to address infrastructure and energy needs were addressed under President Trump's first term and under President Biden.

Bottomline, the NEPA does not say which alternative the decision maker needs to make, it simply says the federal agency needs to clearly identify the proposed action and involve and inform the public and decision maker on the direct and indirect impacts anticipated from the proposed action.

Not having an umbrella set of regulations to guide the federal agencies will result in individual agencies developing their own ways to implement the law. This will make implementing NEPA across federal agencies a confusing process and may ultimately add time and additional court challenges to the very federal decisions revoking it seems to be trying to streamline.

The NEPA regulations were put into effect so the public would have a clear way to be informed of proposed federal actions and federal agency decision makers would have a consistent way to get input on their decisions to make informed decisions. A key function of NEPA is to make the federal decision making better. It serves as an umbrella Act so the public and decision makers can view direct and indirect impacts on proposed federal actions in one place. The NEPA environmental analysis clarifies for the decision maker and public both negative and positive impacts of proposed federal actions. Various requirements from individual Acts across multiple laws are summarized within NEPA documents (i.e. ARPA, NHPA, ESA, Clean Air, Clean Water, Healthy Forests Initiative, Energy Acts, Infrastructure, etc.). Without the NEPA regulations, each federal agency will no longer be required to have consistent NEPA implementing regulations. This will lead to the same situation that drove the 1977 CEQ NEPA regulations to be created in the first place – a need for simple requirements to meet the purpose of the Act. No longer will simple

requirements for an EIS or EA be provided, so federal agencies may break apart and issue separate reports and analysis for the variety of laws they administer, adding time and cost to proposed federal projects and confusion for both the public and the decision maker on how best to gather input and analyze impacts across a multitude of potential resource impacts and input methods. Not having consistent regulations will make the Act impractical to enforce, especially on interagency projects. The NEPA itself is a simple law. Implementation over the years has resulted in over-added complications in action processing, not due to the requirements of the law or regulations but rather analysis additions and court cases. Efforts to streamline implementation is a key role of the CEQ, to remind the agencies that NEPA requires a clear, focused purpose and need and a focused analysis to inform decisions in a consistent manner across agencies. Consistency helps quicken the analysis process, especially when multiple federal agencies are involved in the same action.

In closing, over the years the CEQ has provided key leadership through their regulations, memorandums and efforts to streamline NEPA implementation. The NEPA itself is an umbrella Act whose regulations include simple requirements for public input into federal decision making. Several efforts since its enactment in 1969 have built on lessons learned to streamline its implementation at the federal level. We encourage the CEQ to issue the lessons learned from the NEPA Regulations into CEQ “Memoranda to Agencies” at a minimum or to request clear authority from Congress to issue the regulations proposed for revocation in this Interim Regulation. We also encourage the CEQ to continue to work with federal agencies by continuing the federal agency NEPA expert working groups on key issues each agency addresses, to find commonality and methods for continual improvement in making NEPA implementation practices more efficient, effective, and lasting for the public and federal decision makers and to achieve the objectives of the National Environmental Policy Act.

Comments provided by the Public Lands Foundation

March 24, 2025